IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

Crl.MC.No. 5388 of 2003(C)

ST.1602/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, THIRUVALLA

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PETITIONER: PETITIONER/ACCUSED.

PUNNEN P.MARKOSE, DIRECTOR,
WOOD SYSTEMS (INDIA)PVT.LTD.,
P.B.NO./196, KOTTAYAM.

BY ADV. SRI.JOSEPH KODIANTHARA
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENTS: STATE AND COMPLAINANT.

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1. STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. K.M.ABRAHAM, SECRETARY,
KUNNATHANAM GRAMA PANCHAYATH,
KUNNAMTHANAM P.O. KOTTAYAM.

BY SRI.JOSEPH GEORGE
SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL. M.A. NO. 12677/2003 IN CRL. M.C. NO. 5388/2003

DISMISSED

10.01.2007 SD/- K.R. UDAYABHANU, JUDGE.

K.R. UDAYABHANU, J

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CRL. M.C. NO. 5388 OF 2003

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Dated this the 10th day of January 2006

O R D E R

The petitioner, who allegedly is the Managing Director of Wood Systems (India) Pvt. Ltd., Kottayam, a Company, has sought for setting aside the proceedings initiated against him in S.T. No. 1602/2003 under section 210 of the Kerala Panchayat Raj Act and Rule 27 of the Kerala Panchayat (Taxation and Appeal) Rules 1996 with respect to the non payment of the building tax. The allegation is that the petitioner cannot be prosecuted and only the company can be prosecuted as the company is a legal entity and liable to pay the tax due. It is also contended that he is only a Director of the company and hence he is not responsible for the affairs of the company and that what is mentioned in the complaint that he is the Managing Director, is incorrect. It is also alleged that as per section 243 of the Kerala Panchayat Raj Act, the proceedings are also barred by limitation.

2. The counsel for the respondent has pointed out the decision reported in **Executive Officer v Velayudhan Nadar** (1988 (2) KLT 138) wherein this Court has held that although part of the recovery of the amount due towards building tax is barred by limitation for the rest of the period the proceedings are legal and valid.

3. The period for which tax due claimed is from 1998 up to 2003. It appears only the amount due to 1998-99 would be barred by limitation. The total amount due is mentioned as 49,081. It is also mentioned that distraint steps has been found to be not effective. Hence the contention that the entire proceedings are liable to be set aside as barred by limitation cannot be applied.

4. The other contention of the petitioner is that he is only a Director and hence he cannot be prosecuted. Section 281 of the Panchayat Raj Act specifically provides for the prosecution of the person in charge and responsible for the conduct of the business at the time of the commission of the offence. In the complaint the petitioner is mentioned as the Managing Director. Whether he is a Director or Managing Director is a matter that is to be

established before the trial court. He has not produced any documents to substantiate his case herein.

5. In the circumstances I find that the plea, that the proceedings are liable to be quashed, cannot be sustained. The petitioner/accused would be at liberty to raise all his contentions before the court below untrammeled by the observations contained herein.

The Crl. M.C is dismissed accordingly.

K.R. UDAYABHANU, JUDGE.

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